IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.856 OF 2005
IN
NOTICE OF MOTION NO.1990 OF 2005
IN
SUIT NO.4162 OF 1995

Roop Narian Sah & anr. — Appellants
vs.
Smita Rajeev Sah — Respondent no.1.
And
Bombay Mercantile Co-op. Bank Ltd. — Respondent no.2.

Mr.S.A.Divan i/b. Mr.L.S.Jain for the appellants.

Mr.Phiroz Palkhiwala with Mr.Amol Bavare i/b.Udwadia & Udeshi for the respondent no.1.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 17th November 2005

P.C.

Heard.

2. The principal grievance raised by the learned senior counsel for the appellants in the appeal is that despite the order dated 11th August 2005 the notice of motion was not heard and disposed of on 23rd August 2005 or immediately thereafter. He would submit that the plaintiffs 1 and 2 are senior citizens being aged 78 and 74 respectively.

3. On 11th August 2005 the following order came to be passed by the learned motion Judge:

> "Considering the fact that the Notice of Motion is taken out by a senior citizen in the

> instant suit for disposal of an immovable property to meet the dues of the co-operative bank, parties agree that the motion be disposed off at the ad-interim stage itself. Mr.Joshi seeks a week's time to file rejoinder. Post the Notice of motion on 23rd August 2005. Rejoinder affidavit will be filed by 18th August 2005. Notice of Motion shall appear at the ad-interim board on 23rd August 2005."

4. Obviously in the light of that order, the notice of motion deserved to be heard, if it was not possible to be heard on 23rd August 2005, then as early as possible thereafter.

5. The learned counsel for the respondent no.1 has no objection if the notice of motion is heard expeditiously by the learned motion Judge.

6. We do not intend to fix the calendar of hearing of the notice of motion by the learned motion Judge. Liberty is granted to the appellant to move the learned motion Judge for fixing the date of hearing of the notice of motion. We hope that learned motion Judge shall fix the early date for hearing of the notice of motion.

7. Appeal is disposed of accordingly.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)